CRISPULO MALICSI,
Petitioner,

- versus - C.T.A. CASE NO. 12

COLLECTOR OF INTERNAL REVENUE,
Respondent.

x - - - - - - - - - - - - x

R E S O L U T I O N

This is in connection with the affirmative defense of lack of jurisdiction raised by the respondent in his answer to the petition for review for which a preliminary hearing was held on March 30, 1957. More specifically, the sole issue in this incident is whether or not the petition for review was filed within the 30-day period within which to appeal to this Court as prescribed by Section 11 of Republic Act No. 1125.

The petitioner, in his letter dated April 6, 1954, requested for refund of the sum of ₱2,022.71, representing alleged over-payments of percentage taxes. This request for refund was denied by the respondent in his letter of May 6, 1954. Then, the petitioner, on July 29, 1954, "requested that the question of refund be held in abeyance" pending the final determination of a similar case which was then on appeal in the Supreme Court. The request to hold in abeyance the question of refund was also denied by the respondent in his letter dated August

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25, 1954 wherein he informed the petitioner that his decision of May 6, 1954 has become final for failure to appeal within 30 days from receipt of said decision. On September 16, 1954, the present petition for review was filed with this Court.

There is no question that the decision from which an appeal may be made is that of May 6, 1954, denying the request of the petitioner for refund. However, in the case at bar and other similar cases, the computation of the 30-day period within which to appeal to this Court, should be counted, not from the receipt of the decision dated May 6, 1954, but from July 21, 1954, when this Court was already organized and started to function (Ipekdjian Merchandising Co. vs. Collector, C.T.A. Case No. 107, Oct. 1, 1955). Accordingly, counting from July 21, 1954 to September 16, 1954, when the petition for review was filed with this Court, fifty-seven (57) days elapsed. Therefore, the petition for review was filed out of time and this Court has no jurisdiction to hear and decide the appeal on the merits.

The petitioner, however, contends that his letter dated July 28, 1954 is tantamount to a motion to stay judgment and therefore suspended the running of the 30-day period to file the appeal. We find this contention not well taken. His letter contained no request that respondent's decision be reconsidered, rather it was merely a petition that the "question of refund be held in abeyance".

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It did not stop the running of the time to appeal because it was not of the nature of a request for reconsideration of respondent's decision. Moreover, the Collector of Internal Revenue has no power or authority to extend the 30-day period within which to appeal as fixed by Congress in Section 11 of Republic Act No. 1125.

WHEREFORE, the Petition for Review filed by the petitioner on September 16, 1954, should be, as it is hereby dismissed for lack of jurisdiction.

SO ORDERED.

Manila, Philippines, June 29, 1957.

MARIANO NABLE
Presiding Judge

I CONCUR:

AUGUSTO M. LUCIANO
Associate Judge

ROMAN M. UMALI
Associate Judge
dissents in a separate opinion.

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